Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1841

JULIUS T. CUYLER, MILTON SHAPP,

Petitioners,

vs.

JOHN ADAMS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

In light of an explicit legislative intent to the contrary, is it proper to transfer prisoners, pursuant to Article IV of the Interstate Agreement on Detainers, without granting them the same procedural safeguards afforded by the Uniform Criminal Extradition Act?

STATEMENT

Respondent, John Adams, is an inmate at the State Correctional Institution at Graterford, Pennsylvania. On May 3, 1977, Thomas Shusted, Camden County Prosecutor, made a request to Julius Cuyler, the Superintendent at Graterford, for temporary custody of Adams under the Interstate Agreement on Detainers ("Detainer Agreement"), Pa. Stat. Ann. Tit. 19, §§1431-1438. The request sought the removal of Adams from Graterford and his transportation to a Camden County, New Jersey jail. Adams was to remain in custody in New Jersey pending disposition of criminal charges which had been lodged against him there.

Adams received a copy of the request but was not told that his transfer would be delayed thirty days during which he could petition respondent governor to disapprove his transfer. Accordingly, Adams did not petition for disapproval of the transfer, nor did respondent governor disapprove the transfer on his own motion. Nor did Adams receive a hearing before being shipped to the Camden jail.[1]

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1. In the complaint which Adams filed in this case, he alleged specific facts which would have been likely to have persuaded the governor or a fact finder at a hearing not to order his transfer.

Adams then instituted this class action, on behalf of himself and other similarly situated, pursuant to the Civil Rights Act, 42 U.S.C. §§1981, 1983, in the United States District Court for the Eastern District of Pennsylvania. The class sought damages, a declaratory judgment and injunctive relief. The complaint alleged that the Detainer Act violated the Due Process Clause of the Fourteenth Amendment of the United States Constitution because it failed to provide that inmates transferred pursuant to the Agreement be advised of the right to petition the governor for review of the custody request. The complaint also stated that the Due Process clause was offended by the Agreement's failure to provide for any pre-transfer hearing. Finally, the complaint alleged that the failure to apply the hearing requirements of the Uniform Criminal Extradition Act, Pa. Stat. Ann. Tit. 19, §§191.1-.31, to transfers made pursuant to Article IV of the Detainer Act, deprived the class of equal protection of the law.

The district court summarily dismissed Adams' complaint for failure to state a claim.

Adams appealed the decision. The United States Court of Appeals for the Third Circuit did not reach the constitutional claims. Instead, the Court held that, on the basis of the clear language of Article IV(d) of the Detainer Agreement and its legislative history, prisoners transferred under the Agreement are entitled to the same procedural safeguards provided in the Extradition Act except that affirmative consent of the governor of the sending state is not required.

REASONS FOR DENYING THE WRIT

THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT HAS FULLY CONSIDERED AND CORRECTLY INTERPRETED THE DETAINER AGREEMENT

In a carefully considered opinion, the Court of Appeals for the Third Circuit held that, as a matter of statutory construction, Article IV(d) of the Detainer Agreement requires that all of the rights granted to inmates under the Extradition Act, including the right to a pre-transfer hearing, be afforded to inmates transferred between states pursuant to the Detainer Agreement. In the opinion, the court examined both the language of Article IV of the Detainer Agreement and the Council of State Government's comments on the proposed Detainer Agreement.

The major purpose of the Act was to simplify the procedure for clearing criminal detainers. The language of Article IV(d) makes it clear, however, that when the state, rather than the prisoner, initiates the transfer, all of the protections of the Extradition Act except the requirement of affirmative approval of the governor of the sending state, were retained.

Moreover, the comments make it clear that the drafters intended to make the distinction which is implicit in the text of Articles III and IV. The comments state, in pertinent part:

> "The situation contemplated by this portion of the agreement is different than that dealt with in Article III. That Article relates to proceedings initiated at the request of the prisoner. Accordingly, in such

> instances it is fitting that the prisoner be required to waive extradition. In Article IV the prosecutor initiates the proceeding. Consequently, it probably would be improper to require the prisoner to waive those features of the extradition process which are designed for the protection of his rights."

Council of State Governments, Suggested State Legislation, Program for 1957, at 78-79 (1956).

This, by construing the statute to require that the protections of the Extradition Act be extended to prisoners transferred involuntarily pursuant to the Detainer Agreement, the Court of Appeals was simply effectuating the desires of the legislatures which adopted the Detainer Agreement. The legislative history is clear; Article IV of the Detainer Agreement retains the protections of the Extradition Act. The Court of Appeals, therefore, correctly decided the issues.

THERE IS NO CONFLICT BETWEEN THE DECISION OF THE COURT OF APPEALS IN THIS CASE AND ANY REASONED DECISION OF ANY FEDERAL OR STATE COURT

Petitioners make much of the Fifth Circuit's recent decision in *Atkinson v. Hanberry*, 589 F.2d 917 (5th Cir. 1979), a case similar to the case *sub judice*. There, a federal inmate in Georgia sought to enjoin his involuntary transfer to Ohio pursuant to the Detainer Agreement. He contended that the Detainer Agreement and due process mandated a hearing prior to transfer. The Fifth Circuit rejected both his statutory and constitutional claims.

On its face, this decision conflicts with the Third Circuit's decision in this case. In *Atkinson*, however, the

court addressed the issue of statutory construction summarily, stating only that the Detainer Agreement did not explicitly or implicitly provide a right to a hearing. The Fifth Circuit neither analyzed the language of Article IV(d) of the Agreement nor examined the legislative history behind it. Thus, the court incorrectly concluded that the provision that no affirmative consent of the governor of the sending state was required under Article IV(d) indicated an intention of the drafters not to give the prisoner a right to a pre-transfer hearing. 589 F.2d at 919. More important, by failing to focus on the language of Article IV(d) preserving the rights of transferees, and disregarding the right to a pre-transfer hearing under the Extradition Act, the court never answered the obvious argument that granting inmates a pre-transfer hearing would merely preserve their rights, not expand them. Therefore, while there may be a conflict between the decision in this case and the Fifth Circuit's decision in *Atkinson*, it is plain that the *Atkinson* court failed to make the sort of considered analysis which would establish a conflict in circuits worthy of this Court's attention.

The courts of six states have reviewed the matter of an inmate's pre-transfer rights under the Detainer Act. Of those six states, the courts in four have indeed held that an inmate is not entitled to a pre-transfer hearing or notice of his right to petition the governor.[2] However, in each instance the court examined only the constitutional issues, perfunctorily assuming that the Detainer Agreement could not be construed to afford inmates the rights provided by the Extradition Act. In no case were either the statutory language analyzed or the drafters' comments examined.

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2. *See Commonwealth ex rel. Coleman v. Cuyler*, —— Pa. Superior Ct. ——, 396 A.2d 394 (1978); *Hystad v. Rhay*, 12 Wash. App. 872, 533 P.2d 409 (1975); *State v. Thompson*, 133 N.J. Super. 180, 336 A.2d 11 (1975); *Wertheimer v. State*, 294 Minn. 293, 201 N.W.2d 383 (1972).

As the courts did not address the issue of statutory construction, there can be no conflict with the Third Circuit's decision to afford inmates a pre-transfer hearing and notice, which was based wholly upon the construction of the statute's intended effect.[3]

A REVERSAL OF THE DECISION BELOW ON STATUTORY GROUNDS WOULD REQUIRE THIS COURT TO REACH SERIOUS CONSTITUTIONAL QUESTIONS NOT RAISED UNDER THE DETAINER AGREEMENT AS INTERPRETED BY THE COURT OF APPEALS

Adams' claim, brought pursuant to the Civil Rights Act, 42 U.S.C. §§1981, 1983, alleged that the Detainer Agreement offended both due process and equal protection principles. The Court of Appeals, following this Court's mandate in *Hagans v. Lavine*, 415 U.S. 528, 543 (1974), to avoid unnecessary constitutional adjudications, did not find it necessary to reach those claims after a meticulous consideration of the legislative intent behind the agreement led it to conclude that Adams was entitled to notice of the right to petition the governor and a pre-transfer hearing under the language of the Detainer Agreement.

If this Court were to grant the petition for certiorari and adopt a different interpretation of the Detainer Agreement from the Third Circuit's, it would then have to face serious constitutional challenges to Article IV of that

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3. Even if the state courts had reached the statutory construction-question, their decisions would be entitled to little weight in determining whether this Court should review the decision below, since the interpretation of interstate compacts under Article I, §10, cl. 3 of the Constitution is a matter of federal law. *Petty v. Tennessee-Missouri Bridge Commission*, 359 U.S. 275 (1959); *League to Save Lake Tahoe v. Tahoe Regional Planning Agency*, 507 F.2d 517 (9th Cir. 1974), *cert. denied*, 420 U.S. 974 (1975).

agreement. Indeed, while three intermediate appellate courts have held the agreement constitutional despite an interpretation denying notice or hearing, two of the three highest state courts to reach the question have held that the Detainer Agreement would be unconstitutional if notice and hearing were denied,[4] evidencing the complexity and difficulty of the questions that Adams raised. Yet, as the Court of Appeals' decision in this case demonstrates, these intricate constitutional issues need not be reached if the agreement is interpreted to preserve the involuntary transferee's rights to notice and hearing.

4. *See Moen v. Wilson*, 189 Colo. 85, 536 P.2d 1126 (1975); *State ex rel. Gardner v. Gray*, 55 Wis. 2d 574, 201 N.W.2d 163 (1972); cases cited in note 1, *supra*.

CONCLUSION

The Detainer Agreement is a significant achievement in field of criminal justice, cutting away the red tape and cumbersome proceedings previously necessary to bring prisoners in other states to justice. Yet the explicit legislative intent to reduce obstacles hindering the speedy resolution of criminal detainers is balanced by an equally explicit legislative desire not to deprive inmates of those liberties left to them by the state. The United States Court of Appeals for the Third Circuit painstakingly scrutinized the legislative desires, and correctly found that the Detainer Agreement reserved to inmates the rights previously afforded them by the Extradition Act. The decision does not substantially conflict with any other reasoned decisions, state or federal. Finally, the Third Circuit holding makes it unnecessary for this Court to become mired in the constitutional imbroglio that has developed in this area of the law.

For these reasons, the Court should deny the petition.

Respectfully submitted,

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